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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 219

HARRY C. BYRD, President, et al.,
Petitioners,

vs.

ESTHER McCREADY, minor,
by ELIZABETH McCREADY,
her next friend and parent,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF AND APPENDIX IN SUPPORT THEREOF

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No. .....

HARRY C. BYRD, President, et al.,
Petitioners,

vs.

FOSTER McCREADY, minor,
by ELIZABETH McCREADY,
her next friend and parent,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

TO THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioners, Harry C. Byrd, President of the University of Maryland, Edgar F. Long, Director of Admissions, Florence Meda Gipe, Director of the School of Nursing, and William P. Cole, Jr., et al, constituting the Board of Regents of the University of Maryland, respectfully pray that a writ of certiorari may issue to review the final decision of the Court of Appeals of Maryland in this matter:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED

On February 8, 1948, the Governor of the State of Maryland entered into a Compact, known as "The Regional Compact" with the Governors of the States of Florida, Georgia, Louisiana, Alabama, Mississippi, Tennessee, Arkansas, North Carolina, South Carolina, Texas, Oklahoma, West Virginia and the Commonwealth of Virginia. The General Assembly of Maryland, by Chapter 282 of the Laws of 1949 (Appendix to Brief, pp. 31-38), approved, confirmed and ratified the Compact. As of October 10, 1949, the date on which this case was tried below, the Compact had been ratified and approved by the Legislatures of all the signatory States with the exception of Texas, Virginia and West Virginia and was in full force and effect (R. 18*).

The Regional Compact provides for education in the professional, technological, scientific, literary and other fields for all citizens of the several signatory States, regardless of race or creed, at regional educational institutions in the Southern States. Under the Compact, the Board of Control for Southern Regional Education and the University of Maryland (hereinafter referred to as Maryland) entered into a contract for Training in Nursing Education, dated July 19, 1949 (R. 14-17).

On February 2, 1949, the application of Esther McCready for admission as a first year student in the School of Nursing was received by the University of Maryland. Miss McCready is a Negress, a citizen and resident of the

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* The term "Record" and the symbol "R" will be used to refer to the printed portions of the record filed by the Petitioners with this Court.

State of Maryland and of the United States of America. At the time of filing said application, she was eighteen years of age. Miss McCready's educational and moral qualifications were conceded to be at least equal to the educational and moral qualifications of at least some of the white students who were admitted to the Nursing School class to which she had applied for admission. She was concededly ready, able and willing to pay all fees and expenses for her first year course of study and to conform to all lawful rules and regulations governing first year students at said School (R. 17). Not having been advised by Maryland of any action on her application, on July 27, 1949, Miss McCready filed the Petition for Mandamus in this case.

On August 13, 1949, Dr. Long, Director of Admissions at Maryland, wrote Miss McCready concerning her application. She was advised of the existence and effect of The Regional Compact. She was further advised that arrangements would be made so that she could attend the School of Nursing at Meharry Medical College, Nashville, Tennessee (hereinafter referred to as Meharry), the school at which nursing education was to be provided under the contract dated July 19, 1949, referred to above; that her total expenses incident to attending Meharry, including necessary travel and room and board, would not exceed what it would cost her to attend Maryland; that she would receive the same quality and kind of work at Meharry as she would receive at Maryland. Miss McCready was further advised that she should contact Dr. Long, who would inform her of the procedure to be followed in applying for admission to Meharry (R. 10-11).

It was stipulated at the trial of the case that the total overall cost to Miss McCready, including living and travel-

ing expenses incident to her attendance at Meharry, would not exceed what it would cost her to attend Maryland (R. 18). Evidence offered by Petitioners at the trial below showed clearly that the educational facilities for nursing education afforded at Meharry were at least equal to, if not in fact superior to, the facilities offered at Maryland (R. 39-46; 53-55; 57-59). This evidence was not disputed or contradicted in any way whatsoever by Miss McCready. Miss McCready's application for admission to Maryland was not accepted solely because of the fact that she is a member of the Negro race (R. 17).

II.

JURISDICTIONAL STATEMENT

Petitioners bring this Petition pursuant to Section 1257(3) of Revised Title 28 of the United States Code.

A writ of certiorari is sought to review the final decision entered on April 14, 1950, by the Court of Appeals of Maryland, which is the highest Court of the State of Maryland, in the case in the October Term, 1949, entitled No. 139, *Esther McCready, minor, by Elizabeth McCready, her next friend and parent v. Harry C. Byrd, President, et al* (R. 67-72).

The facts of the case and the rulings below which bring the case within the jurisdictional requirement of Section 1257(3) are these:

The Petitioners, relying upon The Regional Compact and the evidence adduced in the trial below, contended that provision for Miss McCready's nursing education at Meharry would afford separate but equal facilities for such education; that such provision did not in any way deprive Miss McCready of the equal protection of the laws and, therefore, did not violate the Fourteenth Amendment

of the Constitution of the United States. Miss McCready contended that sending her to Meharry would deprive her of the equal protection of the laws and, therefore, abridged her constitutional rights.

The Court of Appeals of Maryland sustained the position of Miss McCready by its decision filed on April 14, 1950. Its decision was based *solely* upon the construction it placed upon the decisions of this Court in the cases of *Missouri, ex rel. Gaines v. Canada,* 305 U. S. 337, 83 L. Ed. 208, and *Sipuel v. Board of Regents of the University of Oklahoma,* 332 U. S. 631, 92 L. Ed. 247. As a matter of fact, the decision of the Court of Appeals of Maryland, except for a recital of the facts and for a passing reference to the case of *University of Maryland v. Murray,* 169 Md. 478, consists entirely of quotations from the decision of this Court in *Missouri, ex rel. Gaines v. Canada, supra.*

The decision of the Court of Appeals of Maryland was based upon dictum in *Missouri, ex rel. Gaines v. Canada, supra,* indicating that separate but equal facilities must be afforded within the jurisdiction of which the person seeking such facilities is a citizen. The Court of Appeals of Maryland incorrectly assumed that such dictum is an absolute rule of law applicable in every case; that The Regional Compact cannot, within the limits of the Constitution of the United States, afford a means of providing "separate but equal" educational facilities for members of the Negro race. This decision was made in the face of declarations of this Court to the effect that Compacts between the States are binding upon all the citizens of such States. *Virginia v. Tennessee,* 148 U. S. 502, 517-519, 37 L. Ed. 537, 542-543; *Poole v. Fleeger,* 11 Pet. 185, 9 L. Ed. 680, 690; *Hinderlider v. La Plata River & Cherry Creek Ditch Company,* 304 U. S. 92, 106, 82 L. Ed. 1202, 1210. This is the type of

Compact between the States which does not require the consent of Congress before it can be effective and binding. *Virginia v. Tennessee, supra, Wharton v. Wise,* 153 U. S. 155, 171-173, 38 L. Ed. 669, 676.

III.

QUESTION PRESENTED

The question for review upon certiorari is:

Did the Offer to Provide Nursing Education for Miss McCready at Meharry Medical College, Nashville, Tennessee, Under The Regional Compact, Afford to Her the Equal Protection of the Laws Guaranteed by the Fourteenth Amendment to the Constitution of the United States?

The Court of Appeals of Maryland, in reversing the judgment of the Baltimore City Court answered this question in the negative. In this finding and conclusion, it is submitted, there is error.

IV.

REASON FOR GRANTING THE WRIT

The reason relied on for the allowance of a writ of certiorari in this case is summarized as follows:

The Court of Appeals of Maryland decided a Federal question of substance not theretofore determined by this Court. It was that in offering to provide nursing education for Miss McCready at Meharry under The Regional Compact the University of Maryland was denying her the equal protection of the laws; that a group of States cannot combine in a Compact for the purpose of providing regional education and under such Compact effect segregation of the races; that the latter statement is true even though admittedly, as in this case, the facilities afforded at the

out-of-State institution are at least equal to the facilities provided in the home State. It is true that this Court has indicated by dictum in *Missouri ex rel. Gaines v. Canada, supra,* that to effectuate segregation of the races for the purpose of education the equal facilities should be provided in the jurisdiction of which the person seeking an education is a citizen. However, it is equally true that this Court has, on a number of occasions, held that such segregation may be effected if equal facilities are provided for the education of both races. Likewise, this Court has held on a number of occasions that Compacts between the States, if valid, are binding upon all of the citizens of the several signatory States. This was held even though such Compact was in derogation of the private rights of such citizens. There is a pressing need for an adjudication by this Court of the conflicting claims of the State of Maryland and the Respondent as to the effect of The Regional Compact and the offer of the University of Maryland to afford nursing education for the Respondent at Meharry.

V.

TRANSCRIPT OF RECORD AND SUPPORTING BRIEF

Petitioners have already submitted to this Court a certified copy of those portions of the record which were printed for the use of the Court of Appeals of Maryland and of the record of proceedings of said Court. Petitioners submit herewith a brief in support of this Petition, and as an appendix to said brief, for the convenience of this Court, Chapter 282 of the Laws of 1949 of the State of Maryland.

WHEREFORE, your Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of Maryland, commanding that Court to certify and to send to this Court for its review and determination, on a day

certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket as No. 139, October Term, 1949, *Esther McCready, minor, by Elizabeth McCready, her next friend and parent v. Harry C. Byrd, President, et al;* and that the said judgment of the Court of Appeals of Maryland may be reversed by this Honorable Court and that your Petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your Petitioners will ever pray.

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her next friend and parent,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION IN THE COURT BELOW

The Opinion of the Court of Appeals of Maryland has not as yet been reported officially. It appears at 73 A(2d) 8 and at pages 67-72 of the Record.* The Opinion of the Baltimore City Court was an oral one and appears at pages 27-34 of the Record.

* The term "Record" and the symbol "R" will be used to refer to the printed portions of the record filed by the Petitioners with this Court.

JURISDICTION

The statutory provision is Section 1257(3), Revised Title 28, United States Code.

The final decision of the Court of Appeals of Maryland reversing the judgment of the Baltimore City Court was entered on April 14, 1950. The Court of Appeals of Maryland is the Court of last resort for the State of Maryland and, as such, meets the test of Section 1257(3), Revised Title 28, United States Code and Rule 38 of this Court.

JURISDICTIONAL STATEMENT

The nature of the case and the rulings below which bring the case within the jurisdictional requirement of Section 1257(3) appear from the following:

The Petitioners, relying upon The Regional Compact and the evidence adduced in the trial below, contended that provision for Miss McCready's nursing education at Meharry would afford separate but equal facilities for such education; that such provision did not in any way deprive Miss McCready of the equal protection of the laws and, therefore, was not in violation of the Fourteenth Amendment of the Constitution of the United States. Miss McCready contended that such provision would deprive her of the equal protection of the laws and would, therefore, abridge her rights under that Amendment.

The Court of Appeals of Maryland sustained the position of Miss McCready by its decision filed on April 14, 1950. Its decision was based *solely* upon the construction placed by it upon the decisions of this Court in the cases of *Missouri, ex rel. Gaines v. Canada*, 305 U. S. 337, 83 L. Ed. 208, and *Sipuel v. Board of Regents of the University of*

Oklahoma, 332 U. S. 631, 92 L. Ed. 247. As a matter of fact, the decision of the Court of Appeals of Maryland, except for the recital of the facts involved and for a passing reference to the case of *University of Maryland v. Murray,* 169 Md. 478, consists entirely of quotations from the decision of this Court in *Missouri, ex rel. Gaines v. Canada, supra.*

The decision of the Court of Appeals of Maryland was based upon dictum in *Missouri, ex rel. Gaines v. Canada,* supra, indicating that separate but equal facilities must be afforded within the jurisdiction where the person seeking such facilities is a citizen. The Court of Appeals of Maryland incorrectly assumed that such dictum is an absolute rule of law applicable in every case; that The Regional Compact cannot, within the limits of the Constitution of the United States, afford a means of providing "separate but equal" educational facilities for members of the Negro race. This decision was made in the face of declarations of this Court to the effect that Compacts between the States are binding upon all the citizens of such States. *Virginia v. Tennessee,* 148 U. S. 502, 517-519, 37 L. Ed. 537, 542-543; *Poole v. Fleeger,* 11 Pet. 185, 9 L. Ed. 680, 690; *Hinderlider v. La Plata River & Cherry Creek Ditch Company,* 304 U. S. 92, 106, 82 L. Ed. 1202, 1210. This is the type of Compact between the States which does not require the consent of Congress before it can be effective and binding. *Virginia v. Tennessee, supra; Wharton v. Wise,* 153 U. S. 155, 171-173; 38 L. Ed. 669, 676.

STATEMENT OF FACTS

The facts in this case are either admitted or uncontradicted. They may be summarized as follows:

Esther McCready (herein referred to as "Respondent"), a Negress, eighteen years of age, a citizen and resident of the State of Maryland and of the United States of America,

duly filed her application, dated February 1, 1949, for admission as a first year student in the School of Nursing of the University of Maryland (herein referred to as "Maryland") for the academic year beginning August 8, 1949. That application was received by the proper authorities of the University of Maryland on February 2, 1949. This School is the only public institution offering a nursing education in the State of Maryland (R. 17-18). Two courses of study are open to students admitted to the School. One is a three year course leading to a certificate. The other requires the prior successful completion of two years of college and leads to a B. S. degree. Three years study is required in each course (R. 8).

The educational and moral qualifications of Respondent are equal to, if not superior to, the educational and moral qualifications of at least some of the white students who were admitted to the first year class at Maryland for the academic year beginning August 8, 1949, and whose applications were received by the proper authorities of the University of Maryland after the receipt of Respondent's application. Respondent was ready, able and willing to pay all fees and expenses for her first year course of study and to conform to all lawful rules and regulations governing first year students at Maryland (R. 17-18). Respondent filed the Petition for Mandamus in this case on July 27, 1949.

On August 13, 1949, Dr. Edgar F. Long, Director of Admissions of the University of Maryland (one of the Petitioners), wrote to Respondent concerning her application (R. 10-11). In this letter, Respondent was advised of the policy of the State of Maryland that members of the white and Negro races should be segregated in public educational institutions. She also was advised that, in further-

ance of said policy, the Governor of the State of Maryland had entered into a Compact dated February 8, 1948, known as "The Regional Compact", with the Governors of the States of Florida, Georgia, Louisiana, Alabama, Mississippi, Tennessee, Arkansas, North Carolina, South Carolina, Texas, Oklahoma, West Virginia and the Commonwealth of Virginia; that the General Assembly of Maryland, by Chapter 282 of the Laws of 1949, approved, confirmed and ratified said Compact, the Act of approval being effective June 1, 1949; that said Compact had been approved by proper legislative action by more than six of the aforesaid States and was in full force and effect; that The Regional Compact makes provision for education in the professional, technological, scientific, literary and other fields of all citizens of the several signatory States, regardless of race or creed, at regional educational institutions in the Southern States; that arrangements had been made whereby the Meharry Medical College, Nashville, Tennessee, had become a Compact Institution to which the signatory States will send students for medical, dental and nursing education. Respondent was further advised that arrangements would be made so that she could attend the School of Nursing at Meharry Medical College (herein referred to as "Meharry"); that her total expenses incident to attending Meharry, including necessary travel and room and board, would not exceed what it would cost her to attend Maryland; that she would receive the same kind and quality of work at Meharry as she would receive at Maryland. Respondent was advised to contact Dr. Long either at College Park or at Baltimore so that he could advise her the procedure to be employed for her admission to Meharry; that it was necessary that her application be certified to Meharry by the Director of Admissions of the University of Maryland.

It was stipulated by Respondent's counsel that the total overall cost to her, including living and traveling expenses, incident to her attendance at Meharry would not exceed what it would cost her to attend Maryland (R. 18). It was further stipulated that as of October 10, 1949, the date on which this case was tried below, The Regional Compact had been ratified and approved by the Legislatures of all the signatory States with the exception of Texas, Virginia and West Virginia and that the Compact was in full force and effect; also that each of the signatory States has segregated schools (R. 18).

It was stipulated that Respondent's application for admission to Maryland was not accepted solely because of the fact that she is a member of the Negro race (R. 17).

There was offered in evidence the Contract for Training in Nursing Education, dated July 19, 1949, between the Board of Control for Southern Regional Education and the University of Maryland (R. 14-17). Under this contract, the Board covenants and agrees, among other things, to provide the State of Maryland with a quota of three places in Meharry Medical College, School of Nursing, Nashville, Tennessee, for first year students to be selected from applicants certified by the State of Maryland, that said quota should continue through each succeeding college class until it applies to all years of instruction desired by the State of Maryland (R. 15). The State of Maryland, among other things, agrees to make certain payments to the Board for each student accepted under the Contract (R. 16). The term of the contract is for two calendar years from July 1, 1949, automatically renewable for an additional term of two years and so on unless either party gives the other party notice, in writing, of its intention to terminate the Contract at least two calendar years prior to the date of termination (R. 16).

At the trial of this case, Petitioners offered evidence, which was not disputed or contradicted in any way whatsoever by Respondent, showing clearly that the educational facilities for nursing education afforded at Meharry were at least substantially equal to, if not in fact somewhat superior to, the facilities offered at Maryland. Dr. Maurice C. Pincoffs, who for a period of sixteen months prior to the trial of this case had been in policy charge of the School of Nursing of the University of Maryland, testified in detail regarding the comparison of the facilities of the two Schools (R. 39-46). His conclusion, based upon a comparison of available funds, character of the student body, character of the faculty, physical facilities (class rooms, laboratories, equipment), curriculum and living conditions, was that "if the objective of the candidate is education in nursing, Meharry Medical College offers at least equivalent, and in my opinion, somewhat better organized instruction in nursing" (R. 46).

Petitioners also produced the testimony of Mrs. Verne Allen Nesbitt, a graduate of Vanderbilt University and the University of Nashville, Tennessee, and a registered nurse. She is a white woman, well educated, whose husband is a medical doctor presently associated with the Johns Hopkins Hospital. At the time of the trial, Mrs. Nesbitt was instructor in obstetrics in the School of Nursing at Sinai Hospital, Baltimore, Maryland. Mrs. Nesbitt taught at Meharry, for one term in the year 1947 (R. 52-53). She testified that "Meharry students are a higher caliber student than you would see in a hospital school of nursing for the reason that they are better prepared, and are young people who are seeking a higher course in nursing than the three year course" (R. 53-54); that the physical facilities offered at Meharry (the nurses' home and the hospital

facilities) compared favorably with the facilities at Vanderbilt or Sinai (R. 54-55). She further testified that she was much impressed with the library of the School, which was shared with medical and dental students; also with the opportunity for social life afforded the students (R. 55).

Petitioners further produced testimony showing that Meharry was accredited by the National League of Nursing Education, which, in itself, shows that it is a first class nursing institution (R. 58). Although accreditation by the League is conditioned upon application by the School of Nursing seeking a rating, Maryland had not, up to the time of trial, sought such accreditation for the reason that its officials did not believe that it could meet the rigid standards of the League (R. 58, 61).

In taking Tennessee State Board of Nursing examinations, graduates of Meharry compared most favorably with graduates of other schools. Out of seven or eight subjects, Meharry graduates' average examination grades were higher than the average examination grades of graduates of approximately fourteen other schools of nursing in Tennessee (R. 45). On the other hand, the record of graduates of Maryland on examinations conducted by the Maryland State Board of Examiners of Nurses' does not compare too favorably with the record of the graduates of other schools of nursing (R. 64-66).

Up to the time of trial, only one graduate of Meharry had applied for registration in the State of Maryland. She is Mrs. Miriam Austin Wilkens, at present Assistant Director of the School of Nursing at Provident Hospital, Baltimore, Maryland. She was registered by the Maryland Board on the basis of her Tennessee registration (R. 57-58).

ERRORS BELOW RELIED ON HERE

Petitioners rely on the following point:

The Fourteenth Amendment to the Constitution of the United States does not prevent the State of Maryland from effecting segregation of the white and Negro races for the purpose of education, provided the facilities offered are substantially equal; that the offer by the University of Maryland under The Regional Compact to provide nursing education for Respondent at Meharry Medical College, School of Nursing, Nashville, Tennessee, would afford equal facilities for the education of Respondent; that, therefore, there has been no abridgement of the Respondent's constitutional guarantee of equal protection of the laws. This point was decided by the Baltimore City Court in favor of the Petitioners and was decided by the Court of Appeals of Maryland erroneously in favor of the Respondent.

ARGUMENT

DID THE OFFER TO PROVIDE NURSING EDUCATION FOR MISS McCREADY AT MEHARRY MEDICAL COLLEGE, NASHVILLE, TENNESSEE, UNDER THE REGIONAL COMPACT, AFFORD TO HER THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

Under the particular facts presented by this case, the only question presented is as follows: Did the State of Maryland, by virtue of the fact that it is a party to The Regional Compact, discharge its duties and obligations to Respondent under the Constitution of the United States when it arranged for her nursing education at Meharry Medical College, School of Nursing, Nashville, Tennessee? This issue is partly a question of fact and partly a question of law; viz: (a) Are the facilities for nursing education offered by Meharry substantially equal to the facilities offered at

Maryland? (b) Is provision for the education of a Maryland citizen at a Compact institution legal segregation of the races for educational purposes within the purview of the Constitution of the United States and the decisions of this Court?

1.

The policy of segregation of the two races for educational purposes is generally accepted throughout the States which are parties to The Regional Compact and has been approved by this Court in the case of *Plessy v. Ferguson*, 163 U. S. 537, 41 L. Ed. 256. This approval of segregation was again recognized in the case of *Missouri, ex rel. Gaines v. Canada*, 305 U. S. 337, 344, 83 L. Ed. 208, 211. Finally, by the very recent decisions of this Court in the cases of *Sweatt v. Painter, et al.*, No. 44, October Term, 1949, and *McLaurin v. Oklahoma State Regents*, No. 34, October Term, 1949, this Court refused to reexamine the "separate but equal" doctrine enunciated in *Plessy v. Ferguson*, supra, although requested to do so by the Solicitor General of the United States.

2.

The Regional Compact (Laws of 1949, Ch. 282), which was approved by the State of Maryland, effective June 1, 1949, was executed by the signatory States for the purpose of the development and maintenance of education of the citizens of such States on a regional basis. It is intended to afford greater educational opportunities for such citizens than could be provided by the several States separately. It applies to all citizens of the States by its express provisions. The operations under the Compact, up to this point, have, in fact, benefited all citizens regardless of race or creed. For example, the State of Maryland, under

The Regional Compact, has sent several white students of veterinary medicine to the University of Georgia and two Negro students of medicine to Meharry.

In his remarks before the 1949 Conference of the National Association of Attorneys General, (Conference Proceedings, 1949, p. 69) Solicitor General William F. Barry, of Tennessee, made the following remarks on this point:

> "Under these arrangements 207 white students and 180 Negro students will receive training in 1949-50. These services are being paid for by a budget of approximately one and one-half million dollars. The Central Control Office operations (located in Atlanta) carry an annual budget of approximately $85,000.
>
> "The program officially began in September, 1948. In less than a year, therefore, regional planning in graduate and professional education grew from a proposal to a program. The Board of Control has begun to serve as an agency through which the states and institutions of the compact area can broaden the base of planning and support so that the opportunities for training leadership in the South can match or exceed opportunities anywhere in the nation."

The Regional Compact is not, either expressly or by necessary implication, aimed at segregation of the races. However, it is available as a means of effecting such segregation when such means are not available within the confines of the several States. The Compact, as of the present time, has been ratified by appropriate legislative action of the signatory States, with the exception of Texas, Virginia and West Virginia.

3.

The Regional Compact is the type of agreement which, under Article I, Section 10, Clause 3 of the Constitution of the United States, does not require approval by Congress before it can become effective. When the Federal Aid to

Education Bill was being debated in the Senate, Senator Morse of Oregon, in his remarks concerning a proposed amendment to said Bill, discussed the fact that he had opposed ratification of The Regional Compact by the Senate. His remarks set forth in the Congressional Record, Vol. 95, No. 77, page 5588, Tuesday, May 3, 1949, show the following reasons for his opposition:

> "First, is this the type of compact which the Constitution requires the Congress to ratify? I shall not repeat my argument of last year at any length, other than to point out that I am satisfied now, as I was then, that the interstate compact offered by the 16 Southern States was not the type of interstate compact that the Congress of the United States, under the Constitution, is required—and I underline the word 'required'—to ratify.
>
> "So when the interstate compact was before us we had to decide this question, 'Is this the type of compact which requires ratification by the Congress of the United States?' Of course the answer to that question was clearly no; and the answer was 'no' because of the second question which we must consider in such a situation. The second question is: What Federal jurisdiction is in any way encroached upon by the proposed contract? It will be recalled that during the course of the debate not a single southern Senator could point out a single Federal power which was encroached upon by the proposed compact. Until they could show wherein that southern compact in some way transgressed a delegated Federal power under the Constitution of the United States, they were clearly out of court, so to speak, so far as the Congress was concerned. They failed to advance any sound argument showing that as a matter of constitutional duty under the interstate compact clause we would have to approve the compact before it could be put into effect by the States."

That this Compact is not the type which requires Congressional approval is further supported by the case of *Virginia v. Tennessee*, 148 U. S. 502, 517-519, 37 L. Ed. 537, 542-543. The applicable rule is stated by the Supreme Court to be as follows:

> "The Constitution provides that 'no state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such immediate danger as will not admit of delay'.
>
> "Is the agreement made without the consent of Congress, between Virginia and Tennessee, to appoint commissioners to run and mark the boundary line between them, within the prohibition of this clause? The terms 'agreement' or 'compact' taken by themselves are sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects; to those to which the United States can have no possible objection or have any interest in interfering with, as well as to those which may tend to increase and build up the political influence of the contracting states, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their entire control.
>
> "There are many matters upon which different states may agree that can in no respect concern the United States. *If, for instance, Virginia should come into possession and ownership of a small parcel of land in New York which the latter state might desire to acquire as a site for a public building, it would hardly be deemed essential for the latter state to obtain the consent of Congress before it could make a valid agreement with Virginia for the purchase of the land.* If Massachusetts, in forwarding its exhibits to the World's Fair at Chicago, should desire to transport them a part of the distance over the Erie Canal, it would

hardly be deemed essential for that state to obtain the consent of Congress before it could contract with New York for the transportation of the exhibit through that State in that way. If the bordering line of two states should cross some malarious and disease producing district, there could be no possible reason, on any conceivable public grounds, to obtain the consent of Congress for the bordering states to agree to unite in draining the district, and thus remove the cause of disease. So in the case of threatened invasion of cholera, plague, or other causes of sickness and death, it would be the height of absurdity to hold that the threatened states could not unite in providing means to prevent and repel the invasion of the pestilence without obtaining the consent of Congress, which might not be at the time in session. If, then, the terms 'compact' or 'agreement' in the Constitution do not apply to every possible compact or agreement between one state and another, for the validity of which the consent of Congress must be obtained, to what compacts or agreements does the Constitution apply?

* * * * * *

"Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States. Story, in his Commentaries (§1403) referring to a previous part of the same section of the Constitution in which the clause in question appears, observes that its language 'may be more plausibly interpreted from the terms used, "treaty, alliance, or confederation," and upon the ground that the sense of each is best known by its association (*noscitur a sociis*) to apply to treaties of a political character; such as treaties of alliance for purposes of peace and war; and treaties of confederation, in which the parties are leagued for mutual government, political co-operation, and the exercise of political sovereignty, and treaties of cession of

sovereignty, or conferring internal political jurisdiction, or external political dependence, or general commercial privileges'; and that 'the latter clause, "compacts and agreements," might then very properly apply to such as regarded what might be deemed mere private rights of sovereignty; such as questions of boundary; interests in land situate in the territory of each other; and other internal regulations for the mutual comfort and convenience of states bordering on each other.' And he adds: 'In such cases the consent of Congress may be properly required, in order to check any infringement of the rights of the national government; and, at the same time, a total prohibition to enter into any compact or agreement might be attended with permanent inconvenience or public mischief.'" (Italics supplied).

See also:

Wharton v. Wise, 153 U. S. 155, 171-173; 38 L. Ed. 669, 676.

It is obvious that The Regional Compact in no way tends "to increase and build up the political influence of the contracting State, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their entire control".

Certainly, interstate problems concerned with health (e.g., infectious or contagious diseases, whether of humans or of animals), institutional care (e.g., women's prisons, mental hospitals, homes for aged) conservation of natural resources (e.g., oyster and fish conservation problems of Maryland and Virginia) and motor vehicles (e.g,. recognition of license tags of a foreign State) can be and have been handled by Compacts between the States without the requirement that they receive the approval of the Congress of the United States.

The Report of the Interstate Compact Committee of the Pennsylvania Bar Association in June, 1950, states as follows:

> "There is now under consideration in eleven western States a proposal to establish a regional institution for care of mentally deficient juvenile delinquents. There has been recommended also creation of regional schools for the deaf and blind on a four-state basis (Utah, Idaho, Wyoming and Nevada). It is not known at the present time whether the States sponsoring these institutional facilities intend to request the consent of the Congress to such plans.
>
> "On the basis of precedents indicating that it is considered unnecessary to secure approval of the Congress with respect to agreements between States when those agreements do not tend to increase political power of the States or encroach on Federal supremacy under the United States Constitution, States are beginning to utilize the compact method for providing services as to which the Federal government has not heretofore asserted authority. Until recently the best known instances have been the arrangements between Virginia and West Virginia for the use of an educational institution in Richmond and between Vermont and New Hampshire for a joint state penitentiary to serve both States."

It is submitted that this is equally true of interstate compacts which are concerned with higher education for citizens of the several States.

4.

The Regional Compact is binding upon each of the signatory States and upon all of the citizens of such States. *Virginia v. Tennessee,* (L. Ed. p. 545), supra; *Poole v. Fleeger,* 11 Pet. 185, 9 Ed. 680, 690; *Hinderlider v. La Plata River & Cherry Creek Ditch Company,* 304 U. S. 92, 106,

82 L. Ed. 1202, 1210. In the last case cited, the Supreme Court of the United States, in discussing the effect of interstate compacts upon the citizens of the signatory States, said as follows:

> "Whether the apportionment of the water of an interstate stream be made by compact between the upper and lower States with the consent of Congress or by a decree of this Court, the apportionment is binding upon the citizens of each State and all water claimants, even where the State had granted the water rights before it entered into the compact. That the private rights of grantees of a State are determined by the adjustment by compact of a disputed boundary was settled a century ago in Poole v. Fleeger, 11 Pet. 185, 209, 9 L. ed. 680, 690, where the Court said:
>
> 'It cannot be doubted, that it is a part of the general right of sovereignty, belonging to independent nations, to establish and fix the disputed boundaries between their respective territories; and the boundaries so established and fixed by compact between nations, become conclusive upon all the subjects and citizens thereof, and bind their rights; and are to be treated, to all intents and purposes, as the true and real boundaries. This is a doctrine universally recognized in the law and practice of nations. It is a right equally belonging to the states of this Union; unless it has been surrendered under the Constitution of the United States. So far from there being any pretense of such a general surrender of the right, that it is expressly recognized by the Constitution and guarded in its exercise by a single limitation or restriction, requiring the consent of Congress.' "

5.

The Regional Compact does not deprive the Respondent of any rights guaranteed to her by the Constitution of the United States.

Considering this point, it must be borne in mind that up to this time none of the decisions of this Court have dealt with the exact problem here under consideration. In the case of *Missouri, ex rel. Gaines v. Canada, supra,* the Petitioner was an applicant for admission to the Law School. This was likewise true in the case of *Sipuel v. Oklahoma,* 332 U. S. 631, 92 L. Ed. 247 (333 U. S. 147, 92 L. Ed. 605). In the *Gaines* case supra, (L. ed. p. 213) in contending that the Writ should be issued, the Petitioners relied particularly upon the special advantages incident to attending a Law School in the State of which one is a citizen and in which one intends to practice. The opinion in the *Sipuel* case was *per curiam* and makes no reference whatsoever to Petitioner's contentions therein, the decision being based upon the rule laid down in the *Gaines* case. Petitioners admit that there are certain advantages incident to attending a local Law School over attendance at one outside of the State where one proposes to practice. In a local school, the emphasis is upon local rules of practice and procedure and substantive law peculiar to that State. There is also the opportunity of observing the local courts in action. *However, no such advantages accrue to a student of nursing. There are no rules regarding nursing which are peculiar to any given State nor is there any practice in the nursing profession peculiar to any given State.*

An additional factor in the present case is that the operations under The Regional Compact are such that the cost to Respondent at Meharry will be no greater than her expenses would be if she attended Maryland. That this is true is conceded by Respondent (R. 18).

Under The Regional Compact, contracts have been entered into between various States, which wish to send students out of their own boundaries for educational pur-

poses, with the Regional Board and by the Board with Colleges and Universities in the various States. It is submitted that, so far as citizens of Maryland are concerned, the effect of these contracts executed under The Regional Compact is identically the same as if the educational facilities were furnished within the State of Maryland. For example, if the Maryland State College, at Princess Anne, (a division of the University of Maryland) afforded facilities for nursing education substantially equal to such facilities provided by the University of Maryland, in Baltimore, Appellees could provide such education for Respondent at the former institution. No question could be raised under such circumstances that Respondent's constitutional rights had been violated. If, in lieu of having facilities for nursing education of Negroes at Princess Anne, Somerset County, the University of Maryland owned a tract of land over the State line in Accomac County, Virginia, and there established facilities for nursing education of Negroes substantially equal to such facilities at the University of Maryland, the same rule would unquestionably apply. Under such circumstances, equal educational opportunities would be afforded to Negro students by the University of Maryland at a division of the University of Maryland. It is inconceivable that the mere fact that the physical facilities were located just outside the boundaries of the State of Maryland would affect the rule. Instead of adopting what would prove to be a most expensive and burdensome procedure, viz. outright purchase of educational facilities so that they would be an integral part of the University of Maryland, the State has adopted the alternative procedure of contracting for education of Maryland citizens in institutions located outside of the State. Maryland citizens are protected by the provisions of The Regional Compact and of the various contracts executed thereunder. There cer-

tainly is no substantial difference between such a contractual arrangement for, and actual ownership of, the educational facilities. By this method, the State of Maryland can maintain its policy of segregation, and, at the same time, provide educational opportunities for Negroes which are equal to those afforded to members of the white race at no additional cost whatsoever to the members of the Negro race.

That the facilities for nursing education offered at Meharry are substantially equal to those offered at Maryland is obvious, and in fact uncontradicted, in the present case so that in that respect this case meets the requirements of all the decisions on this subject. It is clear from a consideration of the careful analysis by Dr. Pincoffs of the two Schools, the testimony of Mrs. Nesbitt and the other evidence offered by Petitioners that a student at Meharry receives an education in nursing certainly equal to that afforded at Maryland. In fact, the conclusion that Meharry, considering all factors, offers better educational facilities can reasonably be drawn from the evidence.

6.

The Regional Compact has introduced a new decisive factor into the law. The new factor is that the States which have ratified the Compact have, for educational purposes, eliminated State lines. It is an attempt through voluntary agreement and cooperation to provide citizens of all the signatory States with unlimited educational opportunities. The opportunities proposed by The Regional Compact have been assured by the execution of contracts thereunder. The operations under The Regional Compact are distinctly different from those under the out-of-State scholarship plans in vogue in a number of States prior to the decision in the *Gaines* case, *supra*. The scholarship

plans provided only for tuition. The fact that the student would incur additional expense, such as travel, was not taken into consideration. This, of course, resulted in inequality. This is no longer true under The Regional Compact plan.

7.

The Court's attention is directed to the fact that a few of the Western-Rocky Mountain States are presently operating under informal agreements which involve incarceration of female prisoners and treatment of mental patients and the aged and indigent. In addition to this, those States are presently drafting a Regional Compact covering medical and dental education similar to that involved in this case. From the foregoing, it will appear that there is a trend toward interstate cooperation in problems of this kind. This, of course, is dictated by a desire to provide adequate and proper care, treatment and education for the citizens of the several States in a single location. Such a solution is socially and economically sound. Most assuredly, it does not in any way deprive the citizens of the several States of the equal protection of the laws.

CONCLUSION

It is respectfully submitted that the *Gaines, Sipuel* and *Murray* cases, *supra,* are not in point and are not controlling in this case; that The Regional Compact is valid and binding upon the signatory States and the citizens of such States; that the administration under the Compact, so far as Respondent is concerned, does not in any way abridge any of her constitutional rights; that Respondent is afforded facilities for nursing education which are certainly equal to and possibly better than she could obtain at the University of Maryland; that, therefore, the judg-

ment of the Court of Appeals of Maryland should be reversed.

Respectfully submitted,

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APPENDIX TO BRIEF

LAWS OF 1949

CHAPTER 282

(Senate Bill 432)

AN ACT to approve, confirm and ratify a certain Compact entered into by the State of Maryland and other Southern States by and through their respective Governors on February 8, 1948, as amended, relating to the development and maintenance of regional educational services and schools in the Southern States in the professional, technological, scientific, literary and other fields, so as to provide greater educational advantages and facilities for the citizens in the several States here recited in such region, and to declare that the State of Maryland is a party to said Compact, as amended, and that the agreements, covenants and obligations therein are binding upon said State.

WHEREAS, on the 8th day of February, in the Year of Our Lord One Thousand Nine Hundred and Forty-eight, the State of Maryland, and the States of Florida, Georgia, Louisiana, Alabama, Mississippi, Tennessee, Arkansas, Virginia, North Carolina, South Carolina, Texas, Oklahoma and West Virginia through and by their respective Governors, entered into a written Compact relative to the development and maintenance of regional educational services and schools in the Southern States in the professional, technological, scientific, literary, and other fields, so as to provide greater educational advantages and facilities for the citizens of the several States who reside within such region; and

WHEREAS, the said Compact has been amended in certain respects, a copy of which Compact as amended is as follows:

THE REGIONAL COMPACT

(As Amended)

WHEREAS, The States who are parties hereto have during the past several years conducted careful investigation look-

ing toward the establishment and maintenance of jointly owned and operated regional educational institutions in the Southern States in the professional, technological, scientific, literary and other fields, so as to provide greater educational advantages and facilities for the citizens of the several States who reside within such region; and

WHEREAS, Meharry Medical College of Nashville, Tennessee, has proposed that its lands, buildings, equipment, and the net income from its endowment be turned over to the Southern States, or to an agency acting in their behalf, to be operated as a regional institution for medical, dental and nursing education upon terms and conditions to be hereafter agreed upon between the Southern States and Meharry Medical College, which proposal, because of the present financial condition of the institution, has been approved by the said States who are parties hereto; and

WHEREAS, The said States desire to enter into a compact with each other providing for the planning and establishment of regional educational facilities;

NOW, THEREFORE, in consideration of the mutual agreements, covenants and obligations assumed by the respective States who are parties hereto (hereinafter referred to as "States"), the said several States do hereby form a geographical district or region consisting of the areas lying within the boundaries of the contracting States which, for the purposes of this compact, shall constitute an area for regional education supported by public funds derived from taxation by the constituent States and derived from other sources for the establishment, acquisition, operation and maintenance of regional educational schools and institutions for the benefit of citizens of the respective States residing within the region so established as may be determined from time to time in accordance with the terms and provisions of this compact.

The States do further hereby establish and create a joint agency which shall be known as the Board of Control for Southern Regional Education (hereinafter referred to as the "Board"), the members of which Board shall consist

of the Governor of each State, *ex officio*, and three additional citizens of each State to be appointed by the Governor thereof, at least one of whom shall be selected from the field of education. The Governor shall continue as a member of the Board during his tenure of office as Governor of the State, but the members of the Board appointed by the Governor shall hold office for a period of four years except that in the original appointments one Board member so appointed by the Governor shall be designated at the time of his appointment to serve an initial term of two years, one Board member to serve an initial term of three years, and the remaining Board member to serve the full term of four years, but thereafter the successor of each appointed Board member shall serve the full term of four years. Vacancies on the Board caused by death, resignation, refusal or inability to serve, shall be filled by appointment by the Governor for the unexpired portion of the term. The officers of the Board shall be a Chairman, a Vice-Chairman, a Secretary, a Treasurer, and such additional officers as may be created by the Board from time to time. The Board shall meet annually and officers shall be elected to hold office until the next annual meeting. The Board shall have the right to formulate and establish by-laws not inconsistent with the provisions of this compact to govern its own actions in the performance of the duties delegated to it including the right to create and appoint an Executive Committee and a Finance Committee with such powers and authority as the Board may delegate to them from time to time. The Board may, within its discretion, elect as its Chairman a person who is not a member of the Board, provided such person resides within a signatory State, and upon such election such person shall become a member of the Board with all the rights and privileges of such membership.

It shall be the duty of the Board to submit plans and recommendations to the States from time to time for their approval and adoption by appropriate legislative action for the development, establishment, acquisition, operation and maintenance of educational schools and institu-

tions within the geographical limits of the regional area of the States, of such character and type and for such educational purposes, professional, technological, scientific, literary, or otherwise, as they may deem and determine to be proper, necessary or advisable. Title to all such educational institutions when so established by appropriate legislative actions of the States and to all properties and facilities used in connection therewith shall be vested in said Board as the agency of and for the use and benefit of the said States and the citizens thereof, and all such educational institutions shall be operated, maintained and financed in the manner herein set out, subject to any provisions or limitations which may be contained in the legislative acts of the States authorizing the creation, establishment and operation of such educational institutions.

In addition to the power and authority heretofore granted, the Board shall have the power to enter into such agreements or arrangements with any of the States and with educational institutions or agencies, as may be required in the judgment of the Board, to provide adequate services and facilities for the graduate, professional, and technical education for the benefit of the citizens of the respective States residing within the region, and such additional and general power and authority as may be vested in the Board from time to time by legislative enactment of the said States.

Any two or more States who are parties of this compact shall have the right to enter into supplemental agreements providing for the establishment, financing and operation of regional educational institutions for the benefit of citizens residing within an area which constitutes a portion of the general region herein created, such institutions to be financed exclusively by such States and to be controlled exclusively by the members of the Board representing such States provided such agreement is submitted to and approved by the Board prior to the establishment of such institutions.

Each State agrees that, when authorized by the Legislature, it will from time to time make available and pay over to said Board such funds as may be required for the establishment, acquisition, operation and maintenance of such regional educational institutions as may be authorized by the States under the terms of this compact, the contribution of each State at all times to be in the proportion that its population bears to the total combined population of the States who are parties hereto as shown from time to time by the most recent official published report of the Bureau of the Census of the United States of America; or upon such other basis as may be agreed upon.

This compact shall not take effect or be binding upon any State unless and until it shall be approved by proper legislative action of as many as six or more of the States whose Governors have subscribed hereto within a period of eighteen months from the date hereof. When and if six or more States shall have given legislative approval to this compact within said eighteen months period, it shall be and become binding upon such six or more States 60 days after the date of legislative approval by the Sixth State and the Governors of such six or more States shall forthwith name the members of the Board from their States as hereinabove set out, and the Board shall then meet on call of the Governor of any State approving this compact, at which time the Board shall elect officers, adopt by-laws, appoint committees and otherwise fully organize. Other States whose names are subscribed hereto shall thereafter become parties hereto upon approval of this compact by legislative action within two years from the date hereof, upon such conditions as may be agreed upon at the time. Provided, however, that with respect to any State whose constitution may require amendment in order to permit legislative approval of the Compact, such State or States shall become parties hereto upon approval of this Compact by legislative action within seven years from the date hereof, upon such conditions as may be agreed upon at the time.

After becoming effective this compact shall thereafter continue without limitation of time; provided, however, that it may be terminated at any time by unanimous action of the States and provided further that any State may withdraw from this compact if such withdrawal is approved by its Legislature, such withdrawal to become effective two years after written notice thereof to the Board accompanied by a certified copy of the requisite legislative action, but such withdrawal shall not relieve the withdrawing State from its obligations hereunder accruing up to the effective date of such withdrawal. Any State so withdrawing shall *ipso facto* cease to have any claim to or ownership of any of the property held or vested in the Board or to any of the funds of the Board held under the terms of this compact.

If any State shall at any time become in default in the performance of any of its obligations assumed herein or with respect to any obligation imposed upon said State as authorized by and in compliance with the terms and provisions of this compact, all rights, privileges and benefits of such defaulting State, its members on the Board and its citizens shall *ipso facto* be and become suspended from and after the date of such default. Unless such default shall be remedied and made good within a period of one year immediately following the date of such default this compact may be terminated with respect to such defaulting State by an affirmative vote of three-fourths of the members of the Board (exclusive of the members representing the State in default), from and after which time such State shall cease to be a party to this compact and shall have no further claim to or ownership of any of the property held by or vested in the Board or to any of the funds of the Board held under the terms of this compact, but such termination shall in no manner release such defaulting State from any accrued obligation or otherwise affect this compact or the rights, duties, privileges or obligations of the remaining States thereunder.

IN WITNESS WHEREOF this Compact has been approved and signed by Governors of the several States, subject to

the approval of their respective Legislatures in the manner hereinabove set out, as of the 8th day of February, 1948.

STATE OF FLORIDA
By MILLARD F. CALDWELL
Governor

STATE OF MARYLAND
By WM. PRESTON LANE, JR.
Governor

STATE OF GEORGIA
By M. E. THOMPSON
Governor

STATE OF LOUISIANA
By J. H. DAVIS
Governor

STATE OF ALABAMA
By JAMES E. FOLSOM
Governor

STATE OF MISSISSIPPI
By F. L. WRIGHT
Governor

STATE OF TENNESSEE
By JIM MCCORD
Governor

STATE OF ARKANSAS
By BEN LANEY
Governor

COMMONWEALTH OF VIRGINIA
By WM. M. TUCK
Governor

STATE OF NORTH CAROLINA
By R. GREGG CHERRY
Governor

STATE OF SOUTH CAROLINA
By J. STROM THURMOND
Governor

STATE OF TEXAS
By BEAUFORD H. JESTER
Governor

STATE OF OKLAHOMA
By ROY J. TURNER
Governor

STATE OF WEST VIRGINIA
By CLARENCE W. MEADOWS
Governor

now, therefore,

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That the said Compact is hereby approved, confirmed and ratified, and that as soon as the said Compact shall be approved, confirmed and ratified by the Legislatures of at least six of the States signatory hereto in accordance with the provisions of the Compact, thereupon and immediately thereafter, every paragraph, clause, provision, matter and thing in the said Compact contained shall be obligatory on this State and the citizens thereof, and shall be forever faithfully and inviolably observed and kept by the government of this State and all of its citizens according to the true intent and meaning and provisions of the said Compact.

SEC. 2. *And be it further enacted,* That, upon the approval of this Compact by the minimum requisite number of States, as provided in said Compact, the Governor is hereby authorized and directed to sign an engrossed copy of the Compact and sufficient copies thereof, so as to provide that each and every State approving the Compact shall have an engrossed copy thereof.

SEC. 3. *And be it further enacted,* That this Act shall take effect on June 1, 1949.

Approved April 22, 1949.